

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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12TH STREET REALTY PARTNERS, LLC,

Plaintiff/Counter-Defendant,

-against-

BUILDERS BANK, an Illinois Banking  
Corporation,

Defendant/Counter-Plaintiff.

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BUILDERS BANK, an Illinois Banking  
Corporation,

Third-Party Plaintiff,

-against-

ALEC SHTROMANDEL and DEVIN  
HERZBERG,

Third-Party Defendants..

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*For 12th Street Realty Partners, LLC:*  
REX WHITEHORN, ESQ.  
Rex Whitehorn & Associates, P.C.  
98 Cutter Mill Road, Suite 234  
Great Neck, New York 11021

*For Builders Bank:*  
RICHARD D. GROSSMAN, ESQ.  
225 West Wacker Drive, Suite 2000  
Chicago, Illinois 60606

**BLOCK, Senior District Judge:**

The Court previously adopted the report and recommendation ("R&R") of Magistrate Judge Pohorelsky that Builders Bank ("Builders") be granted a preliminary injunction entitling it to possession of 314 12th Street, Brooklyn, New York 11215 ("the Property"), which secures construction loans issued by Builders to 12th Street Realty

Partners, LLC ("12th Street"). As explained in the R&R, the preliminary injunction addresses only Builders's right to *possession* of the Property, *see* R&R at 6 ("Builders Bank has established that it is entitled to immediate possession of the property, and I therefore recommend that an injunction be issued granting Builders Bank that relief."); *ownership* of the Property remains to be adjudicated in connection with Builders's motion for summary judgment on its counterclaim for foreclosure, which has been referred to Magistrate Judge Pohorelsky for a second R&R.

At the Court's direction, Builders submitted a proposed preliminary injunction. Having reviewing the proposal, the Court concludes that it would confer rights beyond those attendant to possession and not contemplated by the R&R. Instead, the Court enters the following injunction:

1. 12th Street shall immediately surrender possession of the Property to Builders, and shall deliver to Builders all keys, access codes, electronic openers and other means of entry to the Property or any portion thereof.
2. 12th Street shall not interfere with Builders's possession of the Property; provided, however, that Builders shall allow 12th Street or its agents to enter the Property at reasonable times for the purpose of showing individual units for sale.
3. Builders shall have the right to take any action it deems necessary to operate, manage and control the Property, including the right to make repairs, alterations and improvements to the Property; provided, however, that any repairs, alterations and improvements made without the consent of 12th Street shall be at Builders's own risk

should it not obtain ownership of the Property.

4. Builders shall have the right to any avails, rents, issues and profits of the Property, and to take any action it deems necessary to collect such avails, rents, issues and profits; provided, however, that any such avails, rents, issues and profits shall be held in escrow pending an adjudication of ownership.

5. This injunction shall remain in effect pending completion of this litigation, unless modified or terminated by further order of the Court.

**SO ORDERED.**

/s/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

March 18, 2014  
Brooklyn, New York